

KETUA PENGARAH JABATAN HASIL DALAM NEGERI & ANOR.

v.

ARIA KUMAR @ OMAR BIN ABDULLAH & ANOR

COURT OF APPEAL, KUALA LUMPUR
DATO' MAHADEV SHANKAR JCA
DATO' SITI NORMA YAAKOB JCA
TUAN GOPAL SRI RAM JCA
[CIVIL APPEAL NO. W-01-5-94]
17 JANUARY 1995

ADMINISTRATIVE LAW: *Dismissal - Government servants - Regulation 25(1) Public Officers (Conduct & Discipline) Chapter D General Orders 1980 - Whether mandatory in nature - Non-compliance of Regulation by dismissing authority - Whether fatal.*

The respondents husband and wife were tax officers attached to the Inland Revenue Department, Kuala Lumpur. In 1988 they were transferred to the Kuala Trengganu office of the Department following a transfer exercise. The respondents appealed against the transfer order and in their correspondence pertaining to their appeal they used the Department's Kuala Lumpur office as their address.

Meanwhile the Kuala Trengganu office sent two A. R Registered letters to the respondents pursuant to Regulation 21(4) of the Public Officers (Conduct & Discipline) Chapter D General Orders 1980, asking the respondents to report for work. In sending these letters however the office used an address in Setapak, and not the address as used by the respondents in their said appeal correspondence, and the result was that the letters had never reached the respondents. Subsequently, following a gazette notification issued by the said Kuala Trengganu office, the respondents were deemed dismissed from their employment. The facts showed that it was only after being so dismissed that the respondents were informed that their appeal aforesaid was rejected by the Secretary General of the Ministry of Finance.

The High Court ruled that the respondents' dismissal in the circumstances was void and the appellants, hence, appealed. Before the Court of Appeal the sole issue that arose was whether Regulation 21(5) of the said General Orders, which required that such A.R Registered letters as sent out above could only be sent "where an officer is absent and cannot be traced.." is a mandatory requirement, and if so, whether in this case there was due compliance of the Regulation by the appellants.

Held:

Per Mahadev Shankar JCA (delivering the judgment of the Court):

Regulation 21(5) of the Public Officers (Conduct and Discipline) Chapter D General Orders 1980, which required that the A.R Registered letter preparatory to the Gazette Notification can only be sent "where an officer is absent and cannot be traced..." is mandatory in nature. The requirement is thus a pre-condition which had to be satisfied before resort could be had to the sending of the A.R Registered letter. In this case no attempt to trace was made and therefore the order of the High Court must stand.

[Appeal dismissed]

a [Bahasa Malaysia Translation of Headnotes]

UNDANG-UNDANG PENTADBIRAN: *Pembuangan kerja - Kakitangan Kerajaan - Peraturan 21(5) Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) 1980 - Samada bersifat mandatori - Ketidakpatuhan kepada Perintah oleh badan yang membuang kerja - Samada fatal.*

b Responden adalah sepasang suami isteri yang bekerja sebagai pegawai percukaian di Jabatan Hasil Dalam Negeri, Kuala Lumpur. Pada tahun 1988 berikutan satu gerakan pertukaran, responden telah ditukarkan ke pejabat Jabatan di Kuala Trengganu. Responden merayu terhadap perintah pertukaran tersebut dan dalam surat menyurat berhubung rayuan berkenaan mereka sentiasa menggunakan alamat Jabatan di Kuala Lumpur sebagai alamat mereka.

c Dalam pada itu pejabat Kuala Trengganu telah menghantar surat secara A.R Registered kepada responden di bawah Aturan 21(4) Fasal D Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) 1980 meminta responden melaporkan diri untuk bertugas. Bagaimanapun, semasa menghantar surat ini pejabat tersebut menggunakan satu alamat di Setapak dan tidak alamat seperti yang digunakan oleh responden dalam surat menyurat mereka bersabit rayuan mereka di atas, dan akibatnya surat berkenaan tidak pernah diterima oleh responden. Selepas itu, ekoran satu pemberitahu dalam warta yang dikeluarkan oleh pejabat Kuala Trengganu tersebut, **d** kedua-dua responden dianggap sebagai telah dibuang kerja. Fakta kes menunjukkan bahawa hanyalah selepas pembuangan kerja ini responden telah diberitahu bahawa rayuan mereka di atas telah ditolak oleh Ketua Setiausaha Kementerian Kewangan.

Mahkamah Tinggi memutuskan bahawa pembuangan kerja responden dalam halkeadaan kes adalah tidak sah dan perayu dengan itu telah merayu. Di hadapan Mahkamah Rayuan isu **e** yang timbul ialah samada Peraturan 21(5) Perintah Am di atas, yang mensyaratkan bahawa surat berdaftar seperti yang dihantar dalam kes ini hanya boleh dihantar "apabila pegawai tersebut tidak hadir atau tidak dapat dikesan", merupakan syarat mandatori, dan jika demikian, samada peruntukan tersebut dipatuhi oleh perayu.

Diputuskan:

f **Oleh Mahadev Shankar HMR (menyampaikan keputusan Mahkamah):**

Peraturan 25(1) Fasal D Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) 1980, yang mengkehendaki supaya surat A.R berdaftar sebelum pemberitahu dalam warta hanya boleh dihantar "apabila pegawai tersebut tidak hadir dan tidak boleh dikesan..." adalah peruntukan mandatori. Keperluan tersebut dengan itu adalah satu pra-syarat yang mesti terlebih dahulu dipenuhi sebelum penghantaran surat A.R berdaftar berkenaan dibuat. Dalam kes ini percubaan untuk mengesan tidak dibuat, dan oleh itu, perintah Mahkamah Tinggi mesti terus ditegakkan.

[Rayuan ditolak]

Legislation referred to:

Public Officers (Conduct & Discipline) Chapter D General Orders 1980, reg. 21(5)

h **Other source referred to:**

Shorter Oxford English Dictionary

For the appellants - Abdul Karim bin Abdul Jalil, Peguam Persekutuan

For the respondents - V. Kanagalingam; M/s. V.K. Lingam & Co.

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JUDGMENT

Mahadev Shankar JCA:

The appellants have come before us for an order to set aside a declaration made in the High Court that the purported dismissal of the respondents was void.

The facts are fully set out in the judgment of Y.A. Dato' Wan Adnan bin Ismail, dated 14 September 1994.

Suffice to say that the respondents (who were husband and wife) were Pembantu-Pembantu Cukai stationed in Kuala Lumpur. On 9 July 1988 both were transferred to Kuala Terengganu. They appealed. They gave their address in their appeal letter at Jabatan Hasil Dalam Negeri Kuala Lumpur. On 1 August 1988 the Timbalan Ketua Pengarah rejected their appeal. On 2 August 1988 they saw the Ketua Pengarah himself and handed him another appeal letter giving the same address. He advised them to appeal to the Secretary General of the Ministry of Finance. They did so by letter dated 22 August 1988. As no reply was received they sent reminders on 10 October 1988 and again on 31 January 1989 giving the same address.

Whilst waiting for a response to their appeal the Kuala Terengganu office sent each respondent on AR registered letter on 26 August 1988. These letters stated that the respondents had been absent from duty without just cause from 4 August 1988, and that if they did not report for duty immediately disciplinary action would be taken to dismiss them in accordance with the General Orders 21(4) and 21(6).

These AR registered letters were addressed **not** to the address given by the respondents in their correspondence with the department but to K. 38 Jalan Merbau, Taman Setapak, 53000 Kuala Lumpur. Both letters were returned undelivered.

These AR cards should have alerted the Kuala Terengganu office that neither respondent was at the Setapak address to receive the letters. Indeed the AR Cards do not state any reason why the letters were not received at the said address.

On 2 March 1989 the department published a gazette notification to the effect that the respondents had been absent from their positions without just cause and if they failed to report for duty within seven days from the date of the gazette they would be deemed to have been dismissed.

Since they did not comply with the gazette notification they were deemed dismissed on 10 March 1989 such dismissal to take retrospective effect from the first day they should have reported for work at Kuala Terengganu.

The reply from the Secretary General only came by letter dated 12 April 1989. It was not favourable.

Before us the appeal turned on only one point. Regulations 21(5) of the Public Officers (Conduct & Discipline) Chapter D General Orders 1980 is mandatory and it provides that the AR Registered letter preparatory to the gazette notification can only be sent, "where an officer is absent and cannot be traced ..."

Learned Federal Counsel submitted that the act of sending the AR registered letters to the Setapak address amounted to an attempt to trace the respondents and therefore the requirements of reg. 21(5) had been fulfilled.

- a* With respect to Federal Counsel we could not agree with this submission.
- The word “trace” here simply means “to discover, find by investigation, ascertain, or search out” (see *Shorter Oxford English Dictionary*). As the trial Judge correctly pointed out this was a pre-condition. In other words it had to be satisfied **before** resort could be had to the sending of the AR Registered letter.
- b* Since this had not been done we were obliged to dismiss this appeal without calling upon the respondent. The order to the High Court will stand and the appellants must pay the taxed costs of this appeal.
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